

The bill (H.R. 3758) was read the third time and passed.

PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 759, S. 2520.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2520) to amend title 18, United States Code, with respect to the sexual exploitation of children.

There being no objection, the Senate proceeded to consider the bill which was reported by the Committee on the Judiciary with an amendment to strike all after the enacting clause, and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part printed in italic.]

S. 2520

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002".

SEC. 2. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

"(3) knowingly—

"(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

"(B) advertises, promotes, presents, describes, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material in a manner that conveys the impression that the material is, or contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;"

(B) in paragraph (4), by striking "or" at the end;

(C) in paragraph (5), by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

"(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

"(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

"(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading such minor to participate in any activity that is illegal.";

(2) in subsection (b)(1), by striking "(1), (2), (3), or (4)" and inserting "(1), (2), (3), (4), or (6)"; and

(3) by striking subsection (c) and inserting the following:

"(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

"(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

"(B) each such person was an adult at the time the material was produced; or

"(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense shall be available in any prosecution that involves obscene child pornography or child pornography as described in section 2256(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting a defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice."

SEC. 3. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

"(e) ADMISSIBILITY OF EVIDENCE.—In any prosecution under this chapter, the name, address, or other identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor."

SEC. 4. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: "and shall not be construed to require proof of the actual identity of the person";

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting "is obscene and" before "is";

(B) in subparagraph (C), by striking "or" at the end; and

(C) by striking subparagraph (D) and inserting the following:

"(D) such visual depiction—

"(i) is of a minor, or an individual who appears to be a minor, actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

"(ii) lacks serious literary, artistic, political, or scientific value; or

"(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct; and"

(3) in paragraph (9)(A)(ii)—

(A) by striking "(ii) who is" and inserting the following:

"(ii)(I) who is"; and

(B) by striking "and" at the end and inserting the following: "or

"(II) who is virtually indistinguishable from an actual minor; and".

SEC. 5. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking "of this section" and inserting "of this chapter or chapter 71,"

(2) in subsection (h)(3), by inserting ", computer generated image or picture," after "video tape"; and

(3) in subsection (i)—

(A) by striking "not more than 2 years" and inserting "not more than 5 years"; and

(B) by striking "5 years" and inserting "10 years".

SEC. 6. FEDERAL VICTIMS' PROTECTIONS AND RIGHTS.

Section 227(f)(1)(D) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032(f)(1)(D)) is amended to read as follows:

"(D) where the report discloses a violation of State criminal law to an appropriate official of that State or subdivision of that State for the purpose of enforcing such State law."

SEC. 7. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking "or" at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting "or" at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

"(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or"; and

(2) in subsection (c)—

(A) in paragraph (4), by striking "or" at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

"(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or".

SEC. 8. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking "subsection (d)" each place that term appears and inserting "subsection (e)";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

"(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

“(2) The circumstance referred to in paragraph (1) is that—

“(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

“(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.”.

SEC. 9. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

“(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

“(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

“(A) temporary, preliminary, or permanent injunctive relief;

“(B) compensatory and punitive damages; and

“(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.”.

SEC. 10. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting “chapter 71,” before “chapter 109A,” each place it appears.

SEC. 11. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 12. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate,

amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 13. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002” or “PROTECT Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. “The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,” *New York v. Ferber*, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. “[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.” *Ferber*, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided *Ferber*, the technology did not exist to: (A) create depictions of virtual children that are indistinguishable from depictions of real children; (B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to make depictions of virtual children look real.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since *Ferber* have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges will

likely increase after the *Ashcroft v. Free Speech Coalition* decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable.

(11) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(12) The Supreme Court's 1982 *Ferber v. New York* decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary to ensure that open and notorious trafficking in such materials does not reappear.

SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

“(3) knowingly—

“(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

“(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that conveys the impression that the material or purported material is, or contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;”;

(B) in paragraph (4), by striking “or” at the end;

(C) in paragraph (5), by striking the period at the end and inserting “; or”; and

(D) by adding at the end the following:

“(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

“(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

“(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

“(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer, for purposes of inducing or persuading a minor to participate in any activity that is illegal.”;

(2) in subsection (b)(1), by striking “(1), (2), (3), or (4)” and inserting “(1), (2), (3), (4), or (6)”;

(3) by striking subsection (c) and inserting the following:

“(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

“(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

“(B) each such person was an adult at the time the material was produced; or

“(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense shall be available in any prosecution that involves obscene child pornography or child pornography as described in section 2256(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.”.

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

“(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.”.

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: “and shall not be construed to require proof of the actual identity of the person”;

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting “is obscene and” before “is”;

(B) in subparagraph (C), by striking “or” at the end; and

(C) by striking subparagraph (D) and inserting the following:

“(D) such visual depiction—

“(i) is, or appears to be, of a minor actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

“(ii) lacks serious literary, artistic, political, or scientific value; or

“(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct.”; and

(3) by striking paragraph (9), and inserting the following:

“(9) ‘identifiable minor’—

“(A)(i) means a person—

“(I)(aa) who was a minor at the time the visual depiction was created, adapted, or modified; or

“(bb) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

“(II) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

“(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

“(B) means a computer or computer generated image that is virtually indistinguishable from an actual minor; and

“(10) ‘virtually indistinguishable’ means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor.”.

SEC. 6. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking “of this section” and inserting “of this chapter or chapter 71.”;

(2) in subsection (h)(3), by inserting “, computer generated image or picture,” after “video tape”; and

(3) in subsection (i)—

(A) by striking “not more than 2 years” and inserting “not more than 5 years”; and

(B) by striking “5 years” and inserting “10 years”.

SEC. 7. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (c), by inserting “or pursuant to” after “to comply with”;

(2) by amending subsection (f)(1)(D) to read as follows:

“(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.”;

(3) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(4) by inserting after paragraph (2) of subsection (b) the following new paragraph:

“(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.”.

SEC. 8. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking “or” at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting “or” at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

“(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or”;

and

(2) in subsection (c)—

(A) in paragraph (4), by striking “or” at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

“(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or”.

SEC. 9. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking “subsection (d)” each place that term appears and inserting “subsection (e)”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

“(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

“(2) The circumstance referred to in paragraph (1) is that—

“(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

“(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.”.

SEC. 10. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

“(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

“(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

“(A) temporary, preliminary, or permanent injunctive relief;

“(B) compensatory and punitive damages; and

“(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.”.

SEC. 11. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting “chapter 71,” before “chapter 109A,” each place it appears.

SEC. 12. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline

penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 13. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 14. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. REID. I ask unanimous consent that the committee substitute be agreed to, the bill, as amended, be read a third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2520), as amended, was read the third time and passed.

COMMENDING SAIL BOSTON FOR ITS CONTINUING ADVANCEMENT OF THE MARITIME HERITAGE OF NATIONS

Mr. REID. Madam President, I ask unanimous consent that the Com-

mittee on Commerce be discharged from further consideration of S.J. Res. 42 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 42) commending Sail Boston for its continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. I ask unanimous consent that the joint resolution be read three times, passed, the motion to reconsider laid upon the table, the preamble be agreed to, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (S.J. Res. 42) was read the third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S. J. RES. 42

Whereas Sail Boston is a nonprofit corporation dedicated to the promotion of sail training and sail training events in an effort to build goodwill among the nations of the world by encouraging international sailing competition and gathering of tall ships in the United States;

Whereas Sail Boston has successfully promoted the United States in the international tall ship community since 1992 with its organization of numerous tall ship events in Boston and in the Great Lakes;

Whereas Sail Boston has worked for more than a decade in partnership with the American Sail Training Association in organizing and implementing tall ship gatherings in the United States to emphasize and promote the values of learning and education at sea;

Whereas Sail Boston has successfully established a unique reputation in the celebration of major sailing events and milestones in the maritime history of the United States;

Whereas Sail Boston served as an organizer for the bicentennial celebration of our country's oldest commissioned warship, the U.S.S. Constitution, in 1997 and was selected by the International Sail Training Association of London as Port Organizer for the gathering of the world's tall ships in Boston in 1992 and again in 2000 as part of our country's millennium celebration;

Whereas Sail Boston promoted and implemented 1 of the world's largest tall ship events in the history of sail training in the year 2000, when over 7,500,000 people welcomed a gathering of 145 international and domestic tall ships, representing 34 countries, to the port of Boston; and

Whereas Sail Boston will continue its international goodwill promotions with a gathering of tall ships in Boston in 2004: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) Sail Boston is commended for—

(A) its excellence in the promotion of tall ships and maritime events in Boston and in ports throughout the United States; and

(B) for its work with the American Sail Training Association in the promotion and encouragement of young cadets through training programs, seamanship, and education at sea;

(2) all Americans and citizens of nations throughout the world are encouraged to join in the international friendship and support that Sail Boston and the American Sail Training Association will provide during Sail Boston 2004; and

(3) Sail Boston is encouraged to continue to represent and promote the ports of the United States in the international tall ship community, and to continue to organize and participate in tall ship events in the United States and around the world.

FACILITATING ABILITY OF CERTAIN SPECTRUM AUCTION WINNERS TO PURSUE ALTERNATIVE MEASURES

Mr. REID. I ask unanimous consent that the Commerce Committee be discharged from consideration of S. 2869 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2869) to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I understand that Senators KERRY, BROWNBACK, and HOLLINGS have an amendment at the desk. I ask unanimous consent that it be considered and agreed to; the motion to reconsider be laid upon the table; that the bill, as amended, be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4957) was agreed to as follows:

(Purpose: To authorize the Federal Communications Commission to refund deposits and downpayments made by Auction 35 winning bidders who elect to withdraw their bids)

Strike out all after the enacting clause and insert the following:

SECTION 1. RELIEF FROM CONTINUING OBLIGATIONS.

A winning bidder to which the Commission has not granted an Auction 35 license may irrevocably elect to relinquish any right, title, or interest in that license and the associated license application by formal written notice to the Commission. Such an election may only be made within 30 days after the date of enactment of this Act. A winning bidder that makes such an election shall be free of any obligation the winning bidder would otherwise have with respect to that license, the associated license application, and the associated winning bid, including the obligation to pay the amount of its winning bid that would be otherwise due for such license.

SEC. 2. RETURN OF DEPOSITS AND DOWNPAYMENTS.

Within 37 days after receiving an election that meets the requirements of section 3